

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

OP.No. 727 of 2001(J)

PETITIONER:

M/S.LAKSHMI ACETYLENE (P) LTD.,
VALANJAMBALAM, ERNAKULAM,
KOCHI-16, REP. BY V.P.MADHAVANKUTTY,
S/O.LATE M.SANKARA MENON, AGED 53 YEARS,
DIRECTOR.

BY ADV. SRI.V.B.HARI NARAYANAN

RESPONDENTS:

1. ADDITIONAL SALES TAX OFFICER,
IVTH CIRCLE, ERNAKULAM.
2. COMMISSIONER OF COMMERCIAL TAXES,
OPPOSITE MUSEUM, TRIVANDRUM.
3. STATE OF KERALA, REP. BY SECRETARY TO
GOVERNMENT, TAXES DEPARTMENT, KERALA
GOVERNMENT SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.K.P.PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 06/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON CMP NO.1194/2001 IN O.P. NO.727/2001

DISMISSED:

6.12.2007

SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE CERTIFICATE OF REGISTRATION DT.30.9.91.

P2: TRUE COPY OF SHOW CAUSE NOTICE DT.10.6.98.

P3: TRUE COPY OF REPLY DT.6.7.98 ISSUED BY PETITIONER.

P4: TRUE COPY OF ORDER DT.10.7.98 U/S.10A OF THE CST ACT.

P5: TRUE COPY OF ORDER OF THE DEPUTY COMMISSIONER, DEPT. OF COMMERCIAL TAXES, ERNAKULAM DT.4.3.99.

P6: TRUE COPY OF ORDER NO.STRP 51/99 (R1-17365/99/CT) DT.30.10.2000 OF THE COMMISSIONER OF COMMERCIAL TAXES, TRIVANDRUM.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

.....
O.P. No.727 of 2001
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Dated this the 6th day of December, 2007.

JUDGMENT

Heard counsel for the petitioner and Government Pleader. The petitioner is challenging Ext.P6 order whereunder the penalty levied under Section 10A of the CST Act is refixed at Rs.58,000/-. The penalty originally levied was Rs.1,40,606/- which is double the amount of differential tax paid by the petitioner on interstate purchases. The petitioner is a manufacturer of acetylene which purchased cylinders with chemicals to pack acetylene. Penalty was levied because petitioner claimed cylinders as accessories which is included in the certificate of registration. Counsel contended that the item used is packing material and respondents have no case to the contrary. It is specifically pointed out that acetylene can be packed only in the type of cylinders purchased by the petitioner and being a packing material petitioner is entitled to concessional rate. The mistake committed by the petitioner is only in not declaring cylinders as a packing material for inclusion in the certificate of registration. In the circumstances, I agree with the contention of the petitioner that the violation is only technical i.e. only in regard to the failure of the petitioner to get the

item included in the certificate of registration under the head "packing material". The O.P. is therefore allowed in part by reducing the penalty from Rs.58,000/- to rupees fifteen thousand. The petitioner is granted time till 15.1.2008 to pay the reduced penalty with interest on such amount.

C.N.RAMACHANDRAN NAIR
Judge

pms